

REMARKS

No claims are changed or added by this reply.

Reconsideration of this application is respectfully requested.

Claims 20-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rautila, U.S. patent No. 6,549,625, in view of Kagan, US Patent No. 7,1158,753.

The Office Action cites column 2 lines 43-44, 53-61 of Rautila as being analogous to "...obtaining over a broadcast RF ... communication information necessary for the subscriber unit to automatically communicate with a brokering agent..." of applicants' claim 20. The Office action is vague as to what aspects of Rautila are considered analogous to items in applicants' claims. The applicants' deduce that the information broadcast by the position transceiver of Rautila is being equated to applicants' claimed communication information. Applicants' claim 20 states; "...obtaining over a broadcast RF subcarrier of a commercial FM broadcast station, communication information necessary for the subscriber unit to automatically communicate with a brokering agent that provides automated brokering services for a plurality of wireless service providers". Thus, the communication information is specifically described to be of a nature that is "necessary for the subscriber unit to automatically communicate with a brokering agent that provides automated brokering services for a plurality of wireless service provider" The Office Action fails to specifically identify anything in Rautila or Kagan as a brokering agent that provides automatic brokering services for a plurality of wireless service providers. For example, if the Office Action is analogizing the position transceivers to the commercial broadcast station of applicants' claim 20, then Rautila's broadcast information must include necessary communication information to automatically communicate with a broker. That would imply that the server with the database is analogous to applicants' broker. But there is no description in Rautila of an agent that brokers a plurality of wireless services.

The Office Action cites column 2, line 53 to column 3, line 4 of Rautila as being analogous to "selecting a particular service provider from the plurality of wireless service providers based on offerings of the wireless services;" and "using the communication information to communicate to the brokering agent the identity of the particular wireless service"

of applicants' claim 20, which, it should be noted, are performed "at the subscriber unit", according to claim 20. In the cited section of Rautila, the Office Action discusses a capability of selectively reviewing information broadcast from a plurality of position transceivers. At this point, the failure of the Office Action to identify which items of Rautila are being made analogous to items of applicants' claims compounds the difficulty of understanding the rejection. Since the only relevant part of this section of Rautila is one that mentions that the mobile terminal can select "which information sources in each database [of the position transmitters] from which the user wishes to obtain additional information associated with any of the identification information broadcast from the position transceivers", applicant will infer analogies on this basis. Since the Office Action is analogizing this selection of Rautila to applicant's claimed selection, then applicants conclude that "information about the plurality of service providers" is assumed by the examiner as being transmitted by one or more of the plurality of position transmitters. The plurality of wireless services in this element of applicants' claim 20 are, by antecedent basis, those services for which automatic brokering services are provided by the brokering agent. One would then analogize the brokering agent to something related to the plurality of position transmitters. The "communication information" of applicants' claim 20 includes "information necessary for the subscriber unit to automatically communicate with the brokering agent". Applicants find no such necessary information in Rautila.

The Office Action cites column 7, lines 41-50 of Rautila as being analogous to "establishing a subscription relationship with the particular service provider that has been brokered by the brokering agent". At this point, the failure of the Office Action to identify which items of Rautila are being made analogous to items of applicants' claims further compounds the difficulty of understanding the rejection. Where in Rautila is a subscription service mentioned?

The Examiner combines Rautila with Kagan to obtain at least the aspect of the communication information being obtained over a broadcast RF subcarrier of a commercial FM broadcast. To establish a *prima facie* case of obviousness, and hence to find Claim 20 unpatentable under 35 U.S.C.103(a) over the combination of the Van den Heuvel and Noreen references, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

The Office Action states that it would be obvious to "modify the teachings of Rautila to include the broadcast over RF subcarrier of a commercial FM broadcast station because the FM broadcast would allow for a wider distribution of the signal which advertises the available services. It is noted that while Rautila recites that the RF signal is low-power and/or short range, it is specifically recited that the broadcast is not limited to such (column 3, lines 16-17)." This interpretation of Rautila is one done with a bias in mind, for Rautila says "While not limited thereto, the first transceiver may use a low power optical or RF broadcast communications to connect each position transceiver at the broadcast location to the first transceiver and the information source." An alternative reading of this statement is that Rautila is not limiting the type of low power communications to optical or RF type communications. For example, Rautila may be referring to any other type of low power communications (of which the author may have not been specifically aware, or which the author construed as, for instance, electrostatic or acoustic). Also, it is seems clear that high power communications would not enhance scalability of the Rautila-Kagan system, since in col. 3, lines 7-11, Rautila says "The at least one position transceiver preferably has a limited broadcast range so that the broadcast range is limited within the optical view of the user of the mobile terminals as they pass by the broadcast location." For these reasons, applicants conclude that Kagan would make the Rautila system inoperable and the combination is not proper.

Since the Office Action's relationship of elements in Rautila and Kagan is very vague, applicants' request that, should the examiner decide to maintain the rejection over Rautila and Kagan, the examiner make clear, by reference to figure reference numbers, specifically which items in Rautila and Kagan the examiner is analogizing to which of applicants' claimed elements. Without doing so, applicants believe a further rejection would be improper since applicants have difficulty presenting a concise appeal.

The applicants believe that for the above reasons, not all elements of applicants' claim 20 are described by Rautila, nor by Kagan, nor by any combination of Rautila, Kagan, or the other cited art.

Therefore, applicants believe that claim 20 is patentable over the art cited and that claims 21-24 are also patentable, being dependent upon claim 20.

Applicant notes that any amendments or claim cancellations made herein and not substantively discussed above are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii)

acquiescence in any way to any position taken by the Examiner, based on such amendments or cancellations not substantively discussed. Furthermore, any remarks made herein with respect to a given claim or amendment are intended only in the context of that specific claim or amendment, and should not be applied to other claims, amendments, or aspects of Applicant's invention.

The applicants specifically reserve the right to prosecute claims of differing and broader scope than those presented herein, in a continuation application.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

Please charge any fees associated herewith, including extension of time fees, to 502117.

Respectfully submitted,

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